

(e) These regulations do not preempt other more stringent Federal statutes and regulations.

(f) Unless and until superseded by any new more stringent regulations issued under EPA authorities, or any permits or any pretreatment requirements issued by EPA, a state or local government that affect release of PCBs to any particular medium:

(1) Persons who inadvertently manufacture or import PCBs generated as unintentional impurities in excluded manufacturing processes, as defined in § 761.3, are exempt from the requirements of subpart B of this part, provided that such persons comply with subpart J of this part, as applicable.

(2) Persons who process, distribute in commerce, or use products containing PCBs generated in excluded manufacturing processes defined in § 761.3 are exempt from the requirements of subpart B provided that such persons comply with subpart J of this part, as applicable.

(3) Persons who process, distribute in commerce, or use products containing recycled PCBs defined in § 761.3, are exempt from the requirements of subpart B of this part, provided that such persons comply with subpart J of this part, as applicable.

(4) Except as provided in § 761.20 (d) and (e), persons who process, distribute in commerce, or use products containing excluded PCB products as defined in § 761.3, are exempt from the requirements of subpart B of this part.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605)

[44 FR 31542, May 31, 1979, as amended at 49 FR 28189, July 10, 1984; 53 FR 24220, June 27, 1988; 63 FR 35436, June 29, 1998]

EFFECTIVE DATE NOTE: At 63 FR 35436, June 29, 1998, § 761.1 was amended by revising paragraph (b), effective Aug. 28, 1998. For the convenience of the user, the superseded text is set forth as follows:

#### § 761.1 Applicability.

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(b) This part applies to all persons who manufacture, process, distribute in commerce, use, or dispose of PCBs or PCB Items. Substances that are regulated by this rule include, but are not limited to, dielectric fluids, contaminated solvents, oils, waste

oils, heat transfer fluids, hydraulic fluids, paints, sludges, slurries, dredge spoils, soils, materials contaminated as a result of spills, and other chemical substances or combination of substances, including impurities and byproducts and any byproduct, intermediate or impurity manufactured at any point in a process. Most of the provisions of this part apply to PCBs only if PCBs are present in concentrations above a specified level. For example, subpart D applies generally to materials at concentrations of 50 parts per million (ppm) and above. Also certain provisions of subpart B apply to PCBs inadvertently generated in manufacturing processes at concentrations specified in the definition of "PCB" under § 761.3. No provision specifying a PCB concentration may be avoided as a result of any dilution, unless otherwise specifically provided.

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#### § 761.2 PCB concentration assumptions for use.

(a)(1) Any person may assume that transformers with <3 pounds (1.36 kilograms (kgs)) of fluid, circuit breakers, reclosers, oil-filled cable, and rectifiers whose PCB concentration is not established contain PCBs at <50 ppm.

(2) Any person must assume that mineral oil-filled electrical equipment that was manufactured before July 2, 1979, and whose PCB concentration is not established is PCB-Contaminated Electrical Equipment (i.e., contains ≥50 ppm PCB, but <500 ppm PCB). All pole-top and pad-mounted distribution transformers manufactured before July 2, 1979, must be assumed to be mineral-oil filled. Any person may assume that electrical equipment manufactured after July 2, 1979, is non-PCB (i.e., <50 ppm PCBs). If the date of manufacture of mineral oil-filled electrical equipment is unknown, any person must assume it to be PCB-Contaminated.

(3) Any person must assume that a transformer manufactured prior to July 2, 1979, that contains 1.36 kg (3 pounds) or more of fluid other than mineral oil and whose PCB concentration is not established, is a PCB Transformer (i.e., ≥500 ppm). If the date of manufacture or the type of dielectric fluid is unknown, any person must assume the transformer to be a PCB Transformer.

(4) Any person must assume that a capacitor manufactured prior to July 2,

1979, whose PCB concentration is not established contains  $\geq 500$  ppm PCBs. Any person may assume that a capacitor manufactured after July 2, 1979, is non-PCB (i.e.,  $< 50$  ppm PCBs). If the date of manufacture is unknown, any person must assume the capacitor contains  $\geq 500$  ppm PCBs. Any person may assume that a capacitor marked at the time of manufacture with the statement “No PCBs” in accordance with § 761.40(g) is non-PCB.

(b) PCB concentration may be established by:

(1) Testing the equipment; or

(2)(i) A permanent label, mark, or other documentation from the manufacturer of the equipment indicating its PCB concentration at the time of manufacture; and

(ii) Service records or other documentation indicating the PCB concentration of all fluids used in servicing the equipment since it was first manufactured.

[63 FR 35436, June 29, 1998]

EFFECTIVE DATE NOTE: At 63 FR 35436, June 29, 1998, § 761.2 was added, effective Aug. 28, 1998.

### § 761.3 Definitions.

For the purpose of this part:

*Administrator* means the Administrator of the Environmental Protection Agency, or any employee of the Agency to whom the Administrator may either herein or by order delegate his authority to carry out his functions, or any person who shall by operation of law be authorized to carry out such functions.

*Agency* means the United States Environmental Protection Agency.

*Air compressor system* means air compressors, piping, receiver tanks, volume tanks and bottles, dryers, airlines, and related appurtenances.

*Annual document log* means the detailed information maintained at the facility on the PCB waste handling at the facility.

*Annual report* means the written document submitted each year by each disposer and commercial storer of PCB waste to the appropriate EPA Regional Administrator. The annual report is a brief summary of the information included in the annual document log.

*ASTM* means American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

*Basel Convention* means the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal as entered into force on May 5, 1992.

*Byproduct* means a chemical substance produced without separate commercial intent during the manufacturing or processing of another chemical substance(s) or mixture(s).

*Capacitor* means a device for accumulating and holding a charge of electricity and consisting of conducting surfaces separated by a dielectric. Types of capacitors are as follows:

(1) *Small capacitor* means a capacitor which contains less than 1.36 kg (3 lbs.) of dielectric fluid. The following assumptions may be used if the actual weight of the dielectric fluid is unknown. A capacitor whose total volume is less than 1,639 cubic centimeters (100 cubic inches) may be considered to contain less than 1.36 kgs (3 lbs.) of dielectric fluid and a capacitor whose total volume is more than 3,278 cubic centimeters (200 cubic inches) must be considered to contain more than 1.36 kg (3 lbs.) of dielectric fluid. A capacitor whose volume is between 1,639 and 3,278 cubic centimeters may be considered to contain less than 1.36 kg (3 lbs.) of dielectric fluid if the total weight of the capacitor is less than 4.08 kg (9 lbs.).

(2) *Large high voltage capacitor* means a capacitor which contains 1.36 kg (3 lbs.) or more of dielectric fluid and which operates at 2,000 volts (a.c. or d.c.) or above.

(3) *Large low voltage capacitor* means a capacitor which contains 1.36 kg (3 lbs.) or more of dielectric fluid and which operates below 2,000 volts (a.c. or d.c.).

*CERCLA* means the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601-9657).

*Certification* means a written statement regarding a specific fact or representation that contains the following language:

Under civil and criminal penalties of law for the making or submission of false or fraudulent statements or representations (18 U.S.C. 1001 and 15 U.S.C. 2615), I certify that